

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1318 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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AJAYSING RAMBRIJSING PATEL

Versus

COMMISSIONER OF POLICE, SURAT  
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Appearance:

1. Special Civil Application No. 1318 of 2004  
MS DR KACHHAVAH for Petitioner No. 1  
MR KAMLESH KACHHAVAH for Petitioner No. 1  
Ms Mita Panchal, AGP for Respondent No. 1-3
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CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 07/05/2004

ORAL JUDGEMENT

The petitioner above named has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 7.12.03 passed by respondent no.1 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that three FIRs have been registered against him before Libayat Police Station at C.R.No.167 of 2003, 168 of 2003 and 153 of 2003 on 24.10.2003, 23/24.10.2003 and 30.9.2003 alleging that the petitioner has committed theft in respect of certain motor vehicles on those days and committed offence punishable u/s. 379 read with section 114 of IPC. It was also alleged against the petitioner that two witnesses had rendered statements against the petitioner showing that the petitioner had quarrelled with the said witnesses and when the said witnesses raised shouts, many persons had gathered together at the spot. At that time, the petitioner and his companions took out weapons and rushed towards the said persons gathered at the spot. Therefore, the said persons had to run away from the spot. That on those days i.e. on 7.5.2003 and on 15.9.2003, an atmosphere of fear was generated. On the strength of the aforesaid registered offence and unregistered cases, the petitioner was found to be dangerous person and with a view to prevent him from carrying out such activities, he was ordered to be detained by the impugned order of detention. The petitioner has preferred this petition in order to challenge the said order of detention. It has been contended that simply because few IPC offences have been registered against the petitioner, it cannot be said that the activities of the petitioner were likely to cause a threat to public order. It has also been contended that the detaining authority has also considered statements of two witnesses whose names have not been disclosed. The learned advocate for the petitioner has argued that the names of the witnesses were required to be disclosed and when the names were not disclosed, the petitioner was unaware about those names and hence, the petitioner could not submit an effective representation to the detaining authority or to the State Government. On the strength of the aforesaid contentions, it has been stated that the impugned order is illegal and deserves to be quashed and set aside.

3. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita Panchal, learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the

parties and have perused the papers.

4. At the final hearing, the learned Advocate for the petitioner has argued that simply because a few IPC offences have been registered against the petitioner, it cannot be said that the petitioner's activities will likely to cause a threat to public order. She has further contended that these are stray IPC offences with respect to individual properties and, therefore, there was no likelihood of disturbance to public order.

5. On going through the papers, it is found that as per the allegations against the petitioner, he was alleged to have been involved in theft of three motor vehicles stated in the ground of detention. It has not been explained as to how the public order was disturbed or was likely to be disturbed on account of theft of the aforesaid three vehicles on three different dates at three different places. Learned Advocate for the petitioner appears to be right when she argues that these are individual offences relating to individual moveable properties. Therefore, it cannot be said that public order was likely to be disturbed by the aforesaid activity of the petitioner. So far as the statements of witnesses are concerned, names have not been disclosed and therefore, according to the arguments of the learned advocate for the petitioner, the petitioner could not submit effective representation against his detention.

6. At this stage, learned AGP contends that the learned AGP contends that u/s.9(2) of the said Act, the detaining authority has a power of privilege to withhold the names of the witnesses from the notice of the petitioner. There is no dispute about the same. At the same time, it is required to be considered that such a representation is required to be considered on appropriate material. Before a right or power of privilege is claimed u/s.9(2) of the said Act, the detaining authority has to ascertain by appropriate inquiry that there is a genuine fear or apprehension in the minds of the witnesses on account of which they apprehend fear and therefore, their names were required to be kept away from the notice of the petitioner. In the present case, we find that the records do not show that there was credible material before the detaining authority in order to withhold the names of the witnesses from the notice of the petitioner. In absence of such material on record, it cannot be said that the detaining authority was justified in withholding the names of those witnesses.

7. So, on the one hand, with respect to the registered offences, it could not be said that the illegal activities of the petitioner would lead to a threat to public order, and on the other hand, the statements of witnesses were considered but their names were not disclosed to the petitioner which would amount to a violation of the principle of natural justice. Therefore, on these counts, the order of detention is required to be quashed and set aside.

8. For the foregoing reasons, this petition is allowed. The impugned order dated 7.12.2003 passed by respondent No.1 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp